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conveying personal estate to trustees to collect the income for the benefit of the grantor for life, and at his death to distribute the corpus to designated persons, operated, when executed, acknowledged for registry, and delivered by the grantor to one of the trustees and accepted by him without condition, to divest the title of the grantor, and to invest it in the grantees, on the trusts and for the uses designated.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. § 177; Dec. Dig. § 134.*]

2. Wills (§ 88*)—Will Distinguished from Deed.—An instrument which purports to be a deed, whereby one conveys personal estate to trustees to collect the income for the benefit of the grantor for life, and to distribute the corpus to designated persons on the grantor's death, is a deed, and not a will.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 208-217; Dec. Dig. § 88.*]

3. Descent and Distribution (§ 52*)—Rights of Surviving Wife—Conveyances of Personal Estate by Husband.—A conveyance by a husband, whereby he parts absolutely with personal property and vests the same in trustees to collect the income for his benefit for life, and to distribute the corpus to designated persons on his death, is valid to bar the wife of her distributive share therein, though a husband cannot defeat his wife's claim to her distributive share by will.

[Ed. Note.—For other cases, see Descent and Distribution, Cent. Dig. § 152; Dec. Dig. § 52.*]

TIDEWATER RY. CO. *v.* HURT.

Jan. 14, 1909.

[63 S. E. 421.]

1. Pleading (§ 417*)—Review—Parties Entitled to Allege Error—Estoppel.—When a demurrer to a bill is sustained with leave to amend, if the plaintiff exercises that privilege, he cannot object to the decree sustaining the demurrer.

[Ed. Note.—For other cases, see Pleading, Cent. Dig. § 1401; Dec. Dig. § 417.*]

2. Specific Performance (§ 6*)—Contracts Enforceable—Mutuality.—A contract to convey land to a railroad company for a right of way, is not lacking in mutuality because it contains an introductory recital that, "Whereas [the railroad company] proposes to build a line of railway," etc., where it is obvious that the recital is not a covenant to build a railroad, which covenant could not be specifically enforced, but only a representation as an inducement to the contract, the truth

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

or falsity of which would influence the court in granting or refusing specific performance.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. § 10; Dec. Dig. § 6.*]

3. Specific Performance (§ 94*)—Contracts Enforceable—Mutuality.—Plaintiff's failure to perform a covenant, which is not a condition precedent, will not prevent him from enforcing specific performance of the contract.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. § 249; Dec. Dig. § 94.*]

4. Specific Performance (§ 3*)—Contracts Enforceable—Effect of Part Performance.—A party is entitled to specific performance of a contract to convey land which has been so far performed by him that failure to carry it out would operate as a fraud upon his rights.

[Ed. Note.—For other cases, see Specific Performance, Cent. Dig. § 3; Dec. Dig. § 3.*]

SAXBY et ux. v. SOUTHERN LAND CO.

Jan. 14, 1909.

[63 S. E. 423.]

1. Fraud (§ 9*)—Deception Constituting.—If a person had an option to buy land, its sale and price during the option were wholly under his control, and his statement that it could not be bought for less than a certain amount was not such a false representation as afforded a cause of action for deceit.

[Ed. Note.—For other cases, see Fraud, Dec. Dig. § 9.*]

2. Fraud (§ 18*)—Materiality of Matter Represented.—A representation to purchasers by a person having an option on land that he owned it was immaterial, and hence not actionable fraud.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. § 16; Dec. Dig. § 18.*]

3. Fraud (§ 3*)—Taking Option for Speculation.—That an option on land is taken for purposes of speculation does not constitute fraud or unfair dealing of the person taking the option towards those to whom he sells the land.

[Ed. Note.—For other cases, see Fraud, Dec. Dig. § 3.*]

4. Fraud (§ 11*)—Misrepresentations as to Existing Facts.—A misrepresentation, the falsity of which is actionable, must be of an existing fact, and not the mere expression of an opinion, which is no fraud, however strong and positive the language.

[Ed. Note.—For other cases, see Fraud, Cent. Dig. §§ 12, 13; Dec. Dig. § 11.*]

*For other cases, see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.